THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.13779 OF 1997

DATED: 24-10-2007

BETWEEN

Hazrat Meera Shaheed Darga,
Etkuru Road, Guntur, Rep. by its
Managing Hereditary Mutawalli
Shaik Jani Saheb, S/o. Late Shaik
Ali Saheb.

…PETITIONER

AND

State of Andhra Pradesh,
Rep. by its Secretary,
Social Welfare Department,
Secretariat, Hyderabad
and three others.

…RESPONDENTS

ORDER:

Heard the learned counsel for the petitioner, learned Government Pleader for Land Acquisition appearing for the respondents 1 to 3 and Mr. S. M. Subhani, learned counsel appearing the fourth respondent.

2. It is the case of the petitioner – Hazrat Meera Shaheed Darga, that an extent of Ac.20.78843 sq. feet of land is wakf land of the petitioner – Darga situated in Sy.Nos.677, 737 and 738/2 of Guntur and acquisition proceedings have been initiated for acquiring the said lands in 1982. Accordingly, Draft notification under Section 4(1) and Draft Declaration under Section 6 dispensing enquiry under Section

5-A of the Land Acquisition Act, 1894 (for short 'the Act') have been issued by invoking urgency clause under Section 17(4) of the Act and the same were published in Guntur District Gazette Extraordinary No. I dated

02.06.1982 at pages 23 to 25. Thereafter, the Revenue Divisional Officer and the Land Acquisition Officer have issued notices under Sections 9(1) and 10 of the Act and the same were published in the Gazette. The possession of the said lands were taken by the Mandal Revenue Officer, Guntur and thereafter, the entire land has been divided into 687 plots and pattas were also distributed to the beneficiaries on 01.11.1982.

3. The aforesaid facts are not in dispute. The only grievance of the petitioner is that having acquired wakf lands, though the Darga is entitled for compensation for the wakf lands under the Act, no award has been passed by the Land Acquisition Officer and no compensation has been paid for the benefit of the wakf. Therefore, the petitioner seeks a Writ of Mandamus to direct the respondents to pass award in favour of the petitioner giving statutory benefits under the Act.

4. Counter has been filed by the Revenue Divisional Officer stating that the possession of the said wakf properties have been taken after publication of Section 4(1) notification and Section 6 declaration by dispensing with the enquiry under Section 5 of the Act by invoking urgency clause under Section 17(4) of the Act and pursuant to the publication in the Gazette notification dated 02.06.1982 entire land has been taken possession of and distributed to the beneficiaries on 01.11.1982. It is further stated that the Chief Executive Officer, Andhra Pradesh Wakf Board vide letter dated 26.12.1997 requested the Revenue Divisional Officer to pay the land compensation to Wakf Board and the Wakf Board Inspector also addressed a letter dated 08.01.1998 to pay the compensation, in respect of the lands which was already taken possession, to the Wakf Board. Admittedly, the award has not been passed so far on the ground that funds were not made available to pass an award; therefore, the award could not be passed and compensation could not be paid.

5. The petitioner is not seeking any personal relief but the only grievance is that, admittedly the said property is wakf property; therefore, the Wakf alone is entitled to compensation. No doubt, the compensation has to be deposited in the account of the petitioner – Darga with the Wakf Board and the Wakf Board cannot make use of the said amount for any other purpose except to fulfill the objects of the Wakf of the petitioner alone. Under Section 32 of the Wakf Act,

the Wakf Board has got power of general superintendence on all the wakfs in the State and the Wakf Board is entitled to exercise its powers under the Act to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs are crated. Therefore, any amount deposited with the Wakf Board has to be applied for the purpose for which the petitioner –wakf was created or intended. However, that is not the controversy involved in the writ petition, the only grievance of the petitioner is that the respondents are not passing any award and not paying the compensation under the Act.

6. The only reason for not passing the award and paying compensation is non-availability of funds. However, having acquired the Wakf property there cannot be any justification on the part of the State in not passing the award and in not paying the compensation. The State cannot absolve its statutory duty and obligation to pass award and pay compensation to the owner.

7. Having regard to the facts and circumstances of the case,

the first respondent is directed to make the funds available within three months from the date of receipt of a copy of this order so as to enable the Land Acquisition Officer to pass an award and on deposit of the amount, the Land Acquisition Officer is directed to pass an award within two months thereafter.

The writ petition is accordingly allowed with costs.

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V. ESWARAIAH, J

October 24, 2007
DSK